

REMARKS

This Amendment is in response to the Office Action mailed January 23, 2003 in which claims 1-33 were pending. In the office action claims 1-11 and 14-20 were rejected, claims 21-33 were withdrawn, claims 4, 6-10, and 12-19 were indicated to contain allowable subject matter, and the status of claims 12, and 13 is in question. With this amendment claims 1-13, 15-20 are amended, claims 14, 16 and 21-31 are cancelled, and new claims 34-43 are presented. Reconsideration and allowance of claims 1-11-13, 15, 17-20, and 32-43 are respectfully requested in view of the following remarks.

On page 2 of the Office Action the Examiner indicated that the Swiss patent cited in Applicant's IDS was not considered, because a copy of the patent was not provided. In response the Applicant is providing a new IDS and copy of the referenced patent. Reconsideration of the IDS is respectfully requested.

ELECTION/RESTRICTION

On page 2 of the Office Action the Examiner indicated that claims 12, 13, and 21-33 were withdrawn from consideration as being drawn to a non-elected species. Further the Examiner indicated that this election was made without traverse in paper 13. The applicant would like to point out that the election made in paper 13 was made with traverse, and that the applicant had elected to pursue claims 1-11, 14-20 and 32 and 33. Therefore the applicant is requesting that claims 32 and 33 be reinstated to the present application.

Upon review of the original claims the applicant believes that claims 12 and 13 also apply to the elected species of FIGs. 3A-3C, as well. Claims 12 and 13 depend from generic claim 1 and are also believed to be generic claims as well. Further, the contents of claims 12 and 13 are included in FIG. 1, which, in paper 13, was elected as part of the elected species. Also on

page 5 of the Office Action the Examiner indicated the allowability of claims 12 and 13. Therefore the applicant respectfully requests that claims 12 and 13 be reconsidered in the present prosecution.

#### §112 REJECTIONS

On page 2 of the Office Action the Examiner rejected claims 1-11 and 14-20 under 35 USC §112 as being indefinite. The examiner indicated that in claims 1-11 and 14-20 were unclear. Specifically, the Examiner indicated that that it was unclear what structural elements comprise the invention. Further, the Examiner indicated that other portions the remaining claims were also unclear. In response to the Examiner's rejection of claims 3 and 4 it is noted that the stop surfaces are for limiting the rotation of the label. The abutment surfaces are for providing support to the label in a stable orientation as illustrated in FIG. 3A. In other words, the stop surfaces act in a direction of label rotation opposite to that of the abutment surface. With this amendment claims 1, 3, 4, 6, and 7 are amended in response to the Examiner's rejection. Reconsideration and withdrawal of the rejection is respectfully requested.

#### §102(b) REJECTIONS

On page 3 of the Office Action claims 1, 2, 3, 5 and 11 were rejected under 35 USC §102(b) as being anticipated by Carter, US Patent No 1,153,371. The Examiner indicated that each and every element of the rejected claims was disclosed exactly by the Carter reference. The applicant must respectfully disagree.

Carter discloses adjustable shelving having an upright channel member provided with gripping teeth on free edges, and a shelf having a bracing flange to contact to the forward side of the channel. When the flange contacts the forward side of the channel the shelf is locked into place at the adjusted position.

To move the shelf from one level to the next the shelf is lifted up such that the flange is not in contact with the front side. Then the shelf is raised or lowered by moving the opening of the shelf over the teeth. The shelf is then set at the new position by contacting the flange of the shelf with the front side of the channel.

In contrast, claim 1, as amended, is directed to a plant stake assembly, which is not a shelf and channel as disclosed in the Carter reference. Assuming arguendo, that the channel could be a "plant stake", the shelf in no way can be considered a plant information label. Further, Claim 1 has been amended to recite that the plant information label "is provided with ... print on at least one surface." Carter does not provide any teaching, directly or indirectly, that the shelf 10 is provided with print on at least one surface. Therefore for either of the above reasons it is believed that independent claim 1 is allowable over the Carter reference. Furthermore, dependent claims 2-13, 15, and 17-20, as amended, are believed separately patentable and by virtue of their dependency either directly or indirectly from allowable claim 1. Reconsideration and withdrawal of the rejection are respectfully requested.

Additional aspects of the present invention as recited in some of the dependent claims will be further discussed.

Referring to claim 3, the claim is believed independently allowable over the Carter reference. Specifically, Carter does not disclose a stop surface on the first side of the plant stake for limiting rotation of the information label. Rotation of the shelf (10) in Carter is limited not by the teeth (3) but by flange (13) located on shelf (10). The teeth in Carter, when used with the flange on the shelf allow the shelf to be set at different levels, and do not stop the rotation of the shelf. If the flange (13) in Carter were removed from the shelf, the shelf would continue to rotate, and fall down to the ground as the

shelf would rotate over the teeth. Therefore, as Carter does not disclose a stop surface as claimed in claim 3 it is believed that dependent claim 3, as amended is independently allowable as well.

Reconsider and withdrawal of the rejection are respectfully requested.

Referring now to claim 13. On page 5 of the office Action the Examiner indicated that claim 13 was allowable, if amended to correct the \$112 rejections. With this amendment the rejections of base claim 1 from which claim 13 depends have been corrected. Further, claim 13 recites that "information on the [plant information] label runs from top to bottom on one side and from bottom to top on a second side." This feature is neither taught nor suggested by Carter. Therefore it is believed that claim 13 is independently allowable over Carter. Allowance of claim 13 is respectfully requested.

New claims 34-43 are added with this amendment. These claims are clearly supported by the drawings, and specifically FIG 3A to 3C, as well as the written description, specifically on page 14 of the disclosure. Entry of new claims 34 - 43 is respectfully requested.

In conclusion, the Carter reference does not teach or suggest, either directly or indirectly a plant stake assembly comprising, a plant information label provided with a hole and print on at least one surface, and a plant stake for holding the plant information label. As the limitations of claim 1 are not taught or suggested by the Carter reference it is believed that independent claim 1 is allowable over Carter. Furthermore, dependent claims 2-11, 12, 13, 15, 17-20 and 32-43 are believed allowable as well by virtue of their dependency either directly or indirectly from allowable independent claim 1. Reconsideration and allowance of claims 1-11, 12, 13, 15, 17-20 and 32- 43 are respectfully requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

WESTMAN, CHAMPLIN & KELLY, P.A.

By: 

Steven M. Koehler, Reg. No. 36,188  
Suite 1600 - International Centre  
900 Second Avenue South  
Minneapolis, Minnesota 55402-3319  
Phone: (612) 334-3222 Fax: (612) 334-3312

SMK/NMR/tas